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20 November 1957

Disposal of Communications Records per Section 7 of the Proposed "National Security Agency Act"

1. Subject section of the proposed bill reads as follows:

"Sec. 7. Notwithstanding the Federal Records Act of 1950 (44 U.S.C. 392-402) and any other law governing the disposal of records, communications intelligence and communications security records of the United States may be disposed of in the manner prescribed by the Secretary of Defense."

2. We are concerned with the exemption from "any other law" in connection with the proposed authority of the Secretary of Defense to dispose of "records of the United States" in a manner prescribed by him. It is felt that these two points, particularly when taken together, may well be interpreted to be in conflict with or to encroach upon the responsibility assigned to the Director of Central Intelligence in section 102(d) of the National Security Act of 1947 (50 U.S.C. 403 (1947)) which reads as follows:

"(d) For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council--

"(1) to advise the National Security Council in matters concerning such intelligence activities of the Government departments and agencies as relate to national security;

"(2) to make recommendations to the National Security Council for the coordination of such intelligence activities of the departments and agencies of the Government as relate to the national security;

"(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: Provided, that the Agency shall have no police, subpena, law-enforcement powers, or internal-security functions: Provided further, that the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: And provided further, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure; . . ." (emphasis supplied).

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The entire sub-paragraph is quoted in order to supply the frame of reference for the emphasized portion, with which we feel section 7 would conflict. We would also point out that this responsibility assigned to the Director by the Congress is again emphasized in section 7 of the "Central Intelligence Agency Act of 1949" (50 U.S.C. 403 (a)(1949)) which reads in part as follows:

> "Sec. 7. In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102(d)(3) of the National Security Act of 1947 (Public Law 253, Eightieth Congress, first session) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of sections 1 and 8, chapter 795 of the Act of August 28, 1935 (49 Stat. 956, 957; 5 U.S.C. 654), . . ." (emphasis supplied).

While we recognize the authority assigned to the National Security Agency in the communications field we cannot overlook the clear dictates of Congress with regard to the protection of intelligence sources and methods, no matter what the subject may be--communications or otherwise.

3. We would like to point out that the Central Intelligence Agency complies with the Federal Records Act of 1950 which places the National Archives Establishment under the General Services Administration (GSA). CIA also complies with a basic act not referred to in the proposed legislation, namely the Disposition of Records Act (44 U.S.C. 366-380(1943)) which among other things provides for the promulgation of regulations governing the listing of records for disposal, procedures for disposal and reproduction of records with a view to the disposal of the originals. These are the basic acts governing the disposition of federal records. Under the flexible provisions of the 1950 Act this Agency among other things (1) maintains its own records center with the approval of the Administrator, GSA, and (2) has transferred to the National Archives certain records with specific restrictions on their use and examination. The Agency also cooperates with the National Archives with respect to the disposal of records under the Disposition of Records Act previously referred to. It has been our experience over the years that the responsibility given by the Congress to the Director, CIA, for protecting intelligence sources and methods referred to above, is being fully discharged with respect to records without the necessity of going beyond the respective frameworks of either the Disposition of Records Act or the Federal Records Act of 1950. However, notwithstanding, we would not object to the exemption of CIA from either Act provided such exemption would not encroach on the responsibility of the Director, CIA. Alternative wording is suggested for use in the proposed bill, as follows:

> "Section 7. Notwithstanding the Disposition of Records Act (44 U.S.C. 366-380) and the Federal Records Act of 1950 (44 U.S.C. 392-401), communication intelligence and communications security records of the United States may be disposed of in the manner prescribed by the Secretary of Defense."

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We feel that the omission of the words "or any other law" protects the CIA position. In the event the words "or any other law" are included then the applicable exemption would have to be specified, omitting CIA, or in the alternative CIA would have to be specifically exempted. We feel this would be undesirable.

4. In any event, we cannot acquiesce in section 7 as it is now worded in the proposed bill.

OGC:CEP:mpg

Orig & 1 - Mr. Harry Wilhelm
Bureau of the Budget
Executive Office of the President

Subject - Security (3)
Signer
Chrono

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TRANSMITTAL SLIP | DATE 7 Jan 64

TO: [redacted] STAT
106C

ROOM 7D01 [redacted] Langley

REMARKS:

Here is copy of memo we talked of. May be of some use as background.

FROM: [redacted] STAT

ROOM NO. | BUIL[redacted] | XTENSION

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